



HM Revenue
& Customs

Capital gains tax: entrepreneurs' relief, joint ventures and partnerships

Who is likely to be affected?

Individuals who wish to benefit from entrepreneurs' relief (ER) on capital gains tax (CGT) without holding at least a 5% stake directly in a company carrying on a trade.

General description of the measure

This measure will deny ER on a disposal of shares in a company that is not a trading company in its own right.

Policy objective

The ER rules around joint ventures have been used to set up structures under which people with only a small indirect stake in the trading company can benefit from ER. This is against the policy intention, which is that individuals must have a significant stake in a genuine trading business in order to benefit from ER.

This measure ensures that those who benefit from ER have a 5% directly-held shareholding in a genuine trading company. It does not affect shareholdings in companies whose investment in a joint venture is part of their own trade.

Background to the measure

This measure was announced at Budget 2015.

Detailed proposal

Operative date

This measure will affect disposals on and after 18 March 2015.

Current law

The ER provisions are at sections 169H to 169S of the Taxation of Chargeable Gains Act 1992 (TCGA). ER reduces the rate of CGT on the disposal of assets to 10% from the standard 18% or 28%. One of the conditions for ER to be due on shares is that the shares must be in a 'trading company or the holding company of a trading group': the relevant terms are defined at section 165A of TCGA.

Proposed revisions

Legislation will be introduced in Finance Bill 2015 to amend TCGA so that for ER purposes the definitions of a 'trading company' and 'the holding company of a trading group' do not take account of activities carried on by joint venture companies which a company is invested in, or of partnerships of which a company is a member. Therefore a company would need to have a significant trade of its own in order to be considered as a trading company.

Summary of impacts

Exchequer impact (£m)	2015-16	2016-17	2017-18	2018-19	2019-20
	negligible	+45	+45	+45	+45
	<p>These figures are set out in Table 2.1 of Budget 2015 as 'Capital gains tax: contrived ownership arrangements' and have been certified by the Office for Budget Responsibility. They represent the combined Exchequer impact of 'Capital gains tax: entrepreneurs' relief, joint ventures and partnerships' and 'Capital gains tax: restricting entrepreneurs' relief on associated disposals'. More details can be found in the policy costings document published alongside Budget 2015.</p> <p>This measure supports the Exchequer in its commitment to protect revenue.</p>				
Economic impact	This measure is not expected to have any significant economic impacts.				
Impact on individuals, households and families	<p>Individuals who hold shares in a company which itself holds shares in a joint venture company may be affected if they dispose of their shares, unless the company is a trading company in its own right.</p> <p>This measure is not expected to impact on family formation, stability or breakdown.</p>				
Equalities impacts	This measure is not expected to have a significant impact on those with legally protected characteristics. Those affected will broadly reflect the composition of ER claimants.				
Impact on business including civil society organisations	This measure will have no impact on business and civil society organisations who are undertaking normal commercial transactions; it will only impact on the businesses that are using joint venture rules for tax planning purposes.				
Operational impact (£m) (HMRC or other)	There will be a negligible operational impact on HM Revenue & Customs.				
Other impacts	Other impacts have been considered and none have been identified.				

Monitoring and evaluation

The measure will be monitored through disclosures of new avoidance schemes to circumvent the measure, and through communication with affected taxpayers and practitioners.

Further advice

If you have any questions about this change, please contact Rob Clay on 03000 570649 (email: rob.clay@hmrc.gsi.gov.uk).

1 Entrepreneurs' relief: trading company etc

- (1) Section 169S of TCGA 1992 (entrepreneurs' relief - interpretation) is amended as follows.
- (2) After subsection (4) insert—
 - “(4A) In this Chapter “trading company” and “trading group” have the same meaning as in section 165 (see section 165A), except that, for the purposes of this Chapter—
 - (a) subsections (7) and (12) of section 165A are to be disregarded;
 - (b) in determining whether a company which is a member of a partnership is a trading company, activities carried on by the company as a member of that partnership are to be treated as not being trading activities (see section 165A(4)); and
 - (c) in determining whether a group of companies is a trading group in a case where any one or more companies in the group is a member of a partnership, activities carried on by such a company as a member of the partnership are to be treated as not being trading activities (see section 165A(9)).”
- (3) In subsection (5), omit the entry relating to “trading company” and “trading group” and the “and” preceding that entry.
- (4) For the purposes of conditions B and D in section 169I of TCGA 1992 (material disposal of business assets), any reference to a company ceasing to be a trading company or ceasing to be a member of a trading group does not include a case where a company ceases to be a trading company or ceases to be a member of a trading group by virtue only of the coming into force of subsections (2) and (3).
- (5) This section comes into force on 18 March 2015.

EXPLANATORY NOTE

ENTREPRENEURS' RELIEF: TRADING COMPANY ETC.

SUMMARY

1. This clause changes the meaning of 'trading company' and 'trading group' as those terms are used for the purposes of entrepreneurs' relief on capital gains tax. Under the new rules, whether a company is a trading company or the holding company of a trading group will be determined by reference to that company's own activities (or the activities of group companies). Activities of joint venture companies in which a company holds shares will no longer be treated as carried on by the shareholder company. Activities carried on by a company in its capacity as a partner in a firm will not be treated as trading activities. These rules come into effect on 18 March 2015.

DETAILS OF THE CLAUSE

2. Clause [X] amends section 169S of the Taxation of Chargeable Gains Act (TGCA) 1992.

3. Subsection (2) inserts new subsection (4A) into section 169S to amend the definitions of the terms 'trading company' and 'trading group' for the purposes of entrepreneurs' relief. These terms have the meanings given in section 165A, subject to certain modifications given in the rest of subsection (4A).

4. Section 169S, new subsection (4A), paragraph (a) ensures that, when applying section 165A for these purposes, the special rules at subsections (7) and (12) under which a company is treated as carrying on some of the activities of a joint venture company do not apply.

5. Section 169S, new subsection (4A), paragraph (b) ensures that when determining whether a company is a trading company any activities it carries in as a member of a partnership are treated as not being trading activities.

6. Section 169S, new subsection (4A), paragraph (c) contains a rule for identifying trading groups which corresponds to the rule for trading companies in paragraph (b).

7. Subsection (3) deletes the previous definitions of 'trading company' and 'trading group' which are superseded by new subsection (4A) of section 169S.

8. Subsection (4) ensures that, for the purposes of deciding whether entrepreneurs' relief is due, a company does not cease to be a trading company or a member of a trading group merely as a result of the new rules in this clause coming into force.

BACKGROUND NOTE

9. These new provisions are effective in relation to disposals on or after 18 March 2015 in order to prevent the forestalling which would otherwise be likely.

10. This measure removes an unintended facility under the entrepreneurs' relief rules whereby relief could be claimed by an individual who, whilst holding 5% of a company's shares, did not have a similar stake in the trade which gave the shares their value. Allowing relief in these circumstances is inconsistent with the relief's purpose of supporting significant participation by claimants in businesses.

11. This measure ensures that entrepreneurs' relief is better targeted at people who have a significant investment in a trading business.